IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4709 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALABHA HARIBHA GADHAVI

Versus

DISTRICT MAGISTRATE KUTCH

Appearance:

MR PRAVIN GONDALIYA for the Petitioner.

Ms.Archana Raval, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 26.2.2004. By

the impugned order, the petitioner-detenu is detained as a 'bootlegger' and 'danger person', under the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner-detenu was also served with the grounds of detention. In the grounds of detention, there is a reference about five registered cases against the petitioner. Out of the said cases, cases at seral Nos. 1 to 4 are in connection with dealing in foreign liquor, for which cases have been registered under the Bombay Prohibition Act. So far as the case at serial No.5 is concerned, it is in connection with Sections 323, 504, read with Section 506(2) of the Indian Penal Code, and Section 114 of the Bombay Police Act. The petitioner, as aforesaid, is detained as a 'bootlegger' and "dangerous person" under PASA. It is the aforesaid order which is impugned in this petition by the petitioner.

It is submitted on behalf of the petitioner that so far as cases at serial Nos. 1 to 4 are concerned, they are in connection with dealing in foreign liquor and there is a delay of more than three-and-a-half months in detaining him as 'bootlegger' under PASA from the aforesaid last incident. It is submitted that even after recording the statements of witnesses, thee is a delay in passing the detention order. So far as the last case at serial No.5 is concerned, it is submitted that the said case is registered, treating the petitioner as a "dangerous person" under the Bombay Police Act, but there is only a solitary case and the said case is of purely individual character and it cannot be said that the petitioner has violated any public order.

Mr.Gondaliya, learned Advocate for the petitioner, has relied upon the decision in Elesh Nandubhai Patel v. Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :-

" ... ...

21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the

> allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli SCC 61.
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> ... ..."

In the aforesaid decision, this Court has taken a view that there should not be any unreasonable delay in passing the detention order from the last registered case and the unexplained delay vitiates the order of detention itself. It is also held that the reference about the unregistered cases have been made only with a view to cover up the gap to give life to a stale case.

So far as the detention of the petitioner as a 'bootlegger' is concerned, there is no doubt that there is considerable delay of more than three months from the last registered case. There is also a considerable delay of two months from the recording of the last statement on 22nd December, 2004. The averments in this behalf made in the petition are not denied by filing any reply. On this ground, it can be presumed that the subjective satisfaction of the detaining authority is vitiated on account of delay in passing the detention order and the averments made in the petition have not been denied by filing any reply. On the aforesaid ground, the petition is required to be allowed.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

At this stage, the learned Advocate for the petitioner made a voluntary statement that the petitioner will not enter Adipur Town upto 31st December, 2004. He

submitted that he has taken instructions from the near relative of the petitioner and he has stated that the petitioner will not enter Adipur Town upto the aforesaid date so that he may not be tempted to repeat such offences. This voluntary statement of Mr.Gondaliya is recorded. It is for the police authority to monitor the same.

16th August, 2004 (P.B. Majmudar, J.)

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(apj)